



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO COMMERCIAL CARRIERS CORPORATION West Point, VA**

#### **SECTION A: Purpose**

This is a Special Order by Consent issued under the authority of Va. Code § 62.1-44.34:20(A) and (D) by the State Water Control Board to Commercial Carriers Corporation for the purpose of addressing certain violations of the State Water Control Law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Facility" or "Commercial Carriers" means Commercial Carriers Corporation, located at 7450 Ready Mix Drive, in West Point, VA.
7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

#### **SECTION C: Findings of Fact**

1. Article 11 of the State Water Control law prohibits the discharge of oil upon state waters, lands, or in storm drains.
2. Code of Virginia § 62.1-44.34:19, requires any person discharging or causing or permitting a discharge of oil or any operator of any facility from which there is a discharge of oil to "immediately upon learning of the discharge" notify the Board.
3. On October 19, 2004, the Department was notified by a third party of a gasoline release that occurred on February 18, 2004 at Commercial Carriers in West Point, Virginia. Approximately 250 gallons of diesel fuel was reported released at the facility when a tractor trailer truck drove away from a fuel dispenser, with the nozzle and hose still attached to the truck. The diesel fuel flowed down the slope and into a stormwater drainage ditch. A cleanup contractor was called and the release was abated and the contaminated soil removed.
4. A Notice of Violation (NOV No. 05-02-PRO-507) was issued by the Department on February 24, 2005 citing Commercial Carriers the facility with the following violations:
  - Unpermitted release of petroleum upon state land and into a storm drain;
  - Failure to notify the Department of a petroleum release.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.34:20(A) and (D) orders Commercial Carriers and Commercial Carriers voluntarily agrees to pay a civil charge of \$714 within 30 days of the effective date of the Order in settlement of the violation cited in this Order. When making payment, Commercial Carriers shall reference this Order and shall include its Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Commercial Carriers, for good cause shown by Commercial Carriers, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Commercial Carriers by DEQ on February 24, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Commercial Carriers admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Commercial Carriers consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Commercial Carriers declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Commercial Carriers to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Commercial Carriers shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by

earthquake, flood, other acts of God, war, strike, or such other occurrence. Commercial Carriers shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commercial Carriers shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Commercial Carriers. Notwithstanding the foregoing, Commercial Carriers agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Commercial Carriers petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or,
  - b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days' notice to Commercial Carriers.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Commercial Carriers from its obligation to comply with any statute, regulation, permit condition, other order, certification, standard, or requirement otherwise applicable.

12. By its signature below, Commercial Carriers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29<sup>th</sup> day of September, 2005.

Robert G. Burnley J. (for)  
Robert G. Burnley, Director  
Department of Environmental Quality

Commercial Carriers Corp. voluntarily agrees to the issuance of this Order.

By: Jason C. Edgar  
Date: 7/6/2005

State of Florida  
City/County of Auburndale / Polk

The foregoing document was signed and acknowledged before me this 6<sup>th</sup> day of  
July, 2005, by JASON C. EDGAR, on behalf  
(name)

of Commercial Carriers Corp.  
**Debra Ann Cox**  
Commission # DD313701  
Expires June 1, 2008  
Bonded Troy Fain - Insurance, Inc. 800-385-7019

Debra Ann Cox  
Notary Public

My commission expires: June 1, 2008